

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

INTER-COASTAL WATERWAYS LLC,

Plaintiff,

v.

TRADESTATION SECURITIES, INC. and
DOE DEFENDANTS 1-10,

Defendants,

and

THE FINANCIAL INDUSTRY
REGULATORY AUTHORITY,

Nominal Defendant.

CIVIL ACTION NO. 0:24-cv-60891-AHS

DECLARATION OF GEORGIOS PALIKARAS IN SUPPORT OF PLAINTIFF INTER-COASTAL WATERWAYS LLC'S OPPOSITION TO DEFENDANT TRADESTATION SECURITIES, INC.'S MOTION TO COMPEL ARBITRATION AND CROSS-MOTION FOR THE DISQUALIFICATION OF THE FINANCIAL INDUSTRY REGULATORY AUTHORITY AS MANDATORY ALTERNATIVE DISPUTE RESOLUTION SERVICE TO THIS ACTION

I, Georgios Palikaras, being duly sworn, deposes and says under the penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I was the President and Chief Executive Officer of Metamaterial, Inc. ("META I") until June 28, 2021, and became President and Chief Executive Officer of Meta Materials Inc. (formerly known as Torchlight Energy Resources, Inc.) on June 28, 2021 after the combination of the two companies.

2. I was the President and Chief Executive Officer of Meta Materials Inc. ("META II") trading on the Nasdaq under symbol MMAT from June 28, 2021 until October 10, 2023, as well as a Board Director until December 4, 2023.

3. On December 14, 2020, Torchlight Energy Resources, Inc. (“Torchlight Energy”), an oil and gas exploration company trading on the NASDAQ under the symbol TRCH and META I, a developer of high-performance functional materials and nanocomposite products trading on the CSE in Canada under symbol MMAT.CN, signed a definitive agreement negotiated at arm’s length for a business combination of Torchlight and META I by way of a statutory plan of arrangement (the “Merger”).¹

4. On June 28, 2021, META I combined with Torchlight Energy, and Torchlight Energy was renamed to Meta Materials Inc. (“META II” or the “Company”) and started to trade on the Nasdaq under the symbol MMAT.²

5. Prior to the closing of the Merger transaction, on June 14, 2021, Torchlight Energy declared a Special Dividend of Series A Preferred Stock (the “Dividend” or “Series A Shares”) to be issued on a one-for-one basis to Common Stockholders of Record as of the close of market trading on June 24, 2021 to Torchlight Energy shareholders that held shares prior to the merger.³

6. On June 25, 2021, Torchlight Energy announced that it distributed the Dividend to its shareholders of record on June 24, 2021.⁴

7. The Dividend shares were never intended or authorized to be listed or traded on any exchange, and were created merely to be a dividend placeholder representing the assets of Torchlight Energy that the Company would continue to own as a part of the merger.⁵

¹ See <https://metamaterial.com/metamaterial-and-torchlight-sign-definitive-agreement-for-business-combination/> (last accessed August 15, 2024).

² See <https://metamaterial.com/meta-closes-transaction-and-commences-trading-on-nasdaq/> (last accessed August 15, 2024).

³ See SEC filings, i.e. Torchlight Energy Resources, Inc., Series A Preferred Shares Certificate of Designation (Form 8-K EX-3.2) (June 14, 2021), available at <https://www.sec.gov/Archives/edgar/data/1431959/000119983521000381/ex3-2.htm>.

⁴ See <https://finance.yahoo.com/news/torchlight-announces-payment-special-series-203500696.html> (last accessed August 15, 2024).

⁵ See SEC Filings, i.e. Torchlight Energy Resources, Inc. (Schedule 14A) (May 10, 2021), at 50, available at <https://www.sec.gov/Archives/edgar/data/1431959/000119312521154788/d117540ddefm14a.htm>.

8. On September 30, 2021, pursuant to the closing of the merger with Torchlight Energy, the Company reclassified Torchlight Energy's oil and gas assets as "held for sale" and hired a consultant to help determine the best path to maximize value for Dividend shareholders. The Company informed investors about the ongoing drilling obligations in the Orogrande Project in 2021 to hold the lease for sale or spinout.⁶

9. On December 3, 2021, the Company announced their intent to spinout or dispose of Torchlight Energy's oil and gas assets in early Q1 2022, pending process approvals by all parties involved.⁷

10. On January 14, 2022, the Company updated shareholders⁸ that it was moving forward in the spinout process of Torchlight Energy's oil and gas assets. This work included, but was not limited to, formal transfer of the assets to OilCo Holdings, Inc. ("OilCo"), a newly formed wholly owned subsidiary of META II, as well as making any necessary filings with the U.S. Securities and Exchange Commission and initiating discussions with FINRA.

11. On August 31, 2021, OilCo Holdings, Inc. was incorporated in Nevada as a wholly owned subsidiary of META II, and changed its name to Next Bridge Hydrocarbons, Inc. ("Next Bridge") pursuant to an Amended and Restated Articles of Incorporation filed on June 30, 2022.

12. On July 15, 2022, META II announced that its new, wholly owned subsidiary, Next Bridge, filed a Form S-1 registration statement with the U.S. Securities and Exchange Commission relating to the registration of Next Bridge's common stock. The proposed registration of Next

⁶ See <https://metamaterial.com/meta-commences-drilling-operations-in-orogrande-project-to-maintain-lease-compliance/> (last accessed August 15, 2024).

⁷ See <https://metamaterial.com/meta-provides-update-on-the-special-series-a-preferred-stock-dividend/> (last accessed August 15, 2024).

⁸ See <https://metamaterial.com/meta-provides-update-on-the-special-series-a-preferred-stock-dividend-2/> (last accessed August 15, 2024).

Bridge's common stock was pursued in connection with a planned share exchange to Dividend shareholders.

13. On November 18, 2022, Next Bridge's Form S-1 became effective. Pursuant to Next Bridge's Form S-1, holders of the Series A Preferred Dividend Shares would receive a 1-for-1 share exchange at a future date where one Series A Preferred Dividend Share would be exchanged for one share of Next Bridge common stock.⁹

14. On October 6, 2021, Mr. Greg West, a Senior Corporate Actions Analyst at the Financial Industry Regulatory Authority ("FINRA") sent a basic "for your information" email to META II at investors@metamaterial.com which included a letter attachment from FINRA notifying the Company that they have assigned the ticker symbol MMTLP to the Series A Shares (the "MMTLP Shares") and the MMTLP Shares may be quoted and traded on the Over-The-Counter Market ("OTC Market").

15. On October 7, 2021, META II's management responded to FINRA's letter via email and strenuously objected to the assignment of this new symbol in light of the false and misleading information regarding it and Meta Materials Inc. that was published on the OTC Market's website. We further requested that FINRA provide the Company with the contact information of the individual(s) or group(s) that requested the assignment of the symbol, and requested that the profile information shown on the OTC Markets site be immediately deleted and corrected to reflect the readily available information for META II which was contained in our Form 10-Q filing for the quarter that has ended June 30, 2021. The Company's financial

⁹ See <https://metamaterial.com/meta-materials-inc-board-of-directors-approves-planned-completion-of-the-spin-off-of-next-bridge-hydrocarbons-inc/> (last accessed August 15, 2024). See also <https://www.sec.gov/Archives/edgar/data/1936756/000119312522238430/d302576dex21.htm> (last accessed August 15, 2024).

information provided to FINRA by the unidentified broker(s) seeking a listing exemption was incorrect and outdated, containing publicly available Company information from 2012.

16. On October 7, 2021, the MMTLP shares began trading on the OTC Market without the authorization of the Company. FINRA did not send its notice to the Company until less than 24 hours before the MMTLP Shares began trading on the OTC Market.

17. FINRA did not halt the trading of MMTLP even after META II's management communicated to Mr. West that the listing included false and outdated information. META II management indicated that the Company did not request for FINRA to assign a ticker symbol to the Series A Shares because the Series A Shares were intended by the Company to be a placeholder dividend representing the assets of Torchlight Energy prior to the asset sale or spin-out.

18. On October 8, 2021, Mr. West responded to META II's management letter stating he would be escalating the matter to his superiors.

19. Subsequently, on October 14, 2021, in response to META II's complaint, FINRA's Vice President of Market Operations for FINRA's Market Transparency Services, Ms. Patricia Casimates, left a voicemail for Mr. Ken Rice, META II's Chief Financial Officer, and emailed him asking Mr. Rice to call her regarding the Company's MMTLP complaint.

20. On or about October 14, 2021, Mr. Rice had a phone call with Ms. Casimates regarding META II's MMTLP complaint. During the call, Mr. Rice reported to me that FINRA refused to provide the identity of the broker(s) or individual(s) that applied for the exemption. Mr. Rice reported to me that FINRA or the related broker(s) or individual(s) who applied for the exemption would not edit, delete or modify the false and outdated Company information that was listed on the OTC Market's website.

21. Despite the Company actively attempting to communicate its concerns to FINRA regarding the improper quoting and trading of the MMTLP Shares, the MMTLP Shares remained actively listed and trading on the OTC Market until December 9, 2022. During shareholder updates, Company management warned shareholders regarding this matter.

22. On November 18, 2022, Next Bridge filed a prospectus¹⁰ onto the Securities and Exchange Commission's Electronic Data Gathering, Analysis and Retrieval System informing the public of the summary of the Next Bridge asset spin-off and share exchange.

23. In the prospectus, Next Bridge noted "at the time of the Spin-Off, Meta will distribute 165,472,241 of the outstanding shares of Common Stock held by it on a pro rata basis to holders of Meta's Series A Non-Voting Preferred Stock and contemporaneously cancel any remaining shares of Common Stock it holds." The prospectus further stated "each one share of Meta's Series A Non-Voting Preferred Stock outstanding as of close of business, New York City time, on December 12, 2022, the record date for the Spin-Off (the "Record Date"), will entitle the holder thereof to receive one share of [Next Bridge] Common Stock."¹¹

24. In conjunction with the prospectus, on November 23, 2022, META II published a press release indicating that, "on December 14, 2022 after the close of the trading markets, ... all of the shares of Series A Preferred Stock will be automatically canceled."¹²

25. On November 22, 2022, I received email communication from Mr. Lance Cook, the designated representative for Dividend shareholders. Mr. Cook had been communicating with many of the Series A Preferred shareholders, including the largest Dividend shareholder, Mr. Greg

¹⁰ See SEC filings, *i.e.*, Meta Materials, Inc., Prospectus (File No. 333-266143) (Nov. 18, 2022) (available at https://www.sec.gov/Archives/edgar/data/1936756/000119312522292114/d302576d424b4.htm#toc302576_2), at 1.

¹¹ See SEC filings, *i.e.*, Meta Materials, Inc., Prospectus (File No. 333-266143) (Nov. 18, 2022) (available at https://www.sec.gov/Archives/edgar/data/1936756/000119312522292114/d302576d424b4.htm#toc302576_2).

¹² See <https://www.accesswire.com/728166/meta-materials-inc-board-of-directors-approves-planned-completion-of-the-spin-off-of-next-bridge-hydrocarbons-inc> (last accessed July 31, 2024).

McCabe. Mr. Cook discussed that despite the SEC's approval of the S-1 registration statement and FINRA's notification with regard to the publication of a notice of corporate action (after FINRA had received all information requested from the Company in due course to enable the delisting of MMTLP and completion of the spin-out), there were concerns that there was no reason as to why FINRA was delaying in the consent or objection of META II's corporate action. Mr. Cook also reported that a major issue with the delay of formalizing this spin-out was the inability of the Next Bridge to be able to raise funds.

26. Subsequently, on the same day, November 22, 2022, I forwarded Mr. Lance Cook's email to the OTC Markets team, pleading for a timely response and expedited resolution. The notice of corporate action, designated CAS-75631, was being reviewed by Mr. Luis Cantillo in FINRA's corporate action group who was in contact with the Company's counsel. My understanding is that we had provided him with all necessary supplemental information he had requested.

27. On December 5, 2022, the Company's counsel, together with Next Bridge's counsel drafted and sent a new email requesting escalation of its concerns to FINRA's executive team. This escalation reminded FINRA that through no actions taken by META II, the Company's Series A Preferred Stock began trading in 2021 and was still trading on the OTC Market under the symbol MMTLP. The Company's counsel stated that META II management had notified FINRA of a corporate action (stock dividend) to be taken (FINRA Rule 6490) approximately 3 months prior and, as of that date, we still did not have an answer regarding whether or not FINRA found the request to be deficient. Counsel also noted to FINRA it had become extremely difficult for META II to make plans and, more importantly, could and may be causing confusion in the OTC market of MMTLP to the detriment of META II's investors. Counsel further noted to FINRA that

Next Bridge Hydrocarbons and Meta Materials would need to stand on their own and both companies had responsibilities to their respective shareholders. Counsel further noted to FINRA that any further delays would jeopardize the respective companies' abilities to raise capital and to maintain their respective standing in the marketplace which would be a detriment to all shareholders.

28. Subsequently, on December 5, 2022, in response of the email sent to FINRA's executive team, Ms. Sarah Gill from Office of the Ombudsman responded via email to META II's counsel stating that FINRA's President and Chief Executive Officer, Mr. Robert Cook, had referred the matter to her and a call was scheduled for December 6, 2022 between META II's counsel and Ms. Gill. Following the call, Ms. Gill connected and introduced Ms. Millicent Banks as the contact who leads FINRA's corporate actions team.

29. From September 2022 to December 6, 2022, the Company had submitted the various required documentation and payment to FINRA for the publication of a notice of corporate action announcing the 1-for-1 Series A Preferred share exchange to FINRA's Daily List.

30. On December 7, 2022, FINRA published a notice that it has processed META II's corporate action and published it onto its Daily List, which stated that "MMTLP shareholders with settled positions as of 12/12/22 Record Date will receive one (1) share of Next Bridge Hydrocarbons, Inc. for every one (1) share of MMTLP held on Pay Date of 12/14/22. Purchases of MMTLP executed after 12/8/22 will not receive the distribution. Will not be quoted Ex. [NO EX-DIVIDEND DATE] MMTLP shares will be *canceled* effective 12/13/22.¹³ This language was provided to META II by FINRA's corporate action team.

¹³ See <https://metamaterial.com/meta-materials-announces-finra-has-processed-corporate-action-for-exchange-of-series-a-preferred/> (last accessed August 15, 2024).

31. Further, on or about December 8, 2022, FINRA notified the Company that it had unilaterally revised the language of the Company's December 6, 2022 corporate action and required the revised notice to be published on the Daily List. This revision was made without the input or authorization of the Company and took place on or about December 7, 2022, *after* FINRA had a call discussion with DTCC. I was informed that META II and Next Bridge's counsel were not invited to participate in the call between FINRA and DTCC.¹⁴

32. To facilitate the successful execution of the MMTLP-Next Bridge share exchange, on December 8, 2022, the revised notice of corporate action was published on FINRA's Daily List, changing the language used by META II in the original corporate action to read, "MMTLP will be *deleted* effective 12/13/22."

33. After the revised notice of corporate action was published to FINRA's Daily List, the Company announced via press release that "FINRA [had] revised [the Company's] corporate action for exchange of Series A Preferred."

34. On December 9, 2022, FINRA announced it had enacted a U3 halt on the trading of MMTLP Shares, claiming there was "significant uncertainty in the settlement and clearing process" for the security.

35. Prior to the U3 halt, FINRA never stated in any communications to the Company (or publicly) that they were going to halt the trading as of December 8, 2022. META II's counsel reached out again on the Morning of December 9, 2022 to ask Ms. Gill whether the halt was permanent or temporary. Only *after* the halt, FINRA added a note on their UPC Advisory page.

36. During my own inquiries for several weeks after the halt, as well as through counsel including multiple calls with the Ms. Gill at the Office of the Ombudsman, we never received any

¹⁴ See <https://metamaterial.com/meta-materials-announces-finra-has-revised-corporate-action-for-exchange-of-series-a-preferred/> (last accessed August 15, 2024).

answers for exactly what the “extraordinary event” or reasons were that FINRA relied on to enact the halt.¹⁵ If FINRA had planned the halt all along, it is my opinion that they should have put such information into the announcement in order to fully inform and protect shareholders and avoid shareholder confusion.

37. On December 13, 2022, FINRA deleted the MMTLP ticker.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August 15, 2024



Georgios Palikaras

**Georgios
Palikaras** Digitally signed
by Georgios
Palikaras
Date: 2024.08.15
19:56:27 -03'00'

¹⁵ See ECF 1-6 at 3.